

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA
TERENGGANU
DI DALAM NEGERI TERENGGANU, MALAYSIA
PETISYEN PILIHAN RAYA NO: TA-26PP-3-01/2023**

Dalam perkara Pilihan Raya Umum ke-15 bagi bahagian pilihan raya Parlimen Kemaman (P.040) Negeri Terengganu, yang diadakan pada 15.11.2022 untuk hari mengundi awal dan pada 19.11.2022 untuk hari mengundi umum.

Dan

Dalam perkara Perlembagaan Persekutuan termasuk Perkara 113, 118 dan Jadual Kelapan.

Dan

Dalam perkara Akta Pilihan raya 1958 (Disemak 1970) [Akta 19]

Dan

Dalam perkara Seksyen-sekseyen 10(a), 10(c), 10(e), 11(1)(b), 32(c), 34(a) 35(b), 36, 38 dan 42 Akta Kesalahan Pilihan raya 1954 (Akta 5).

Dan

Dalam perkara Kaedah-kaedah Petisyen Pilihan Raya 1954

Dan

Dalam perkara Kaedah-kaedah Mahkamah 2012

Dan

Dalam perkara bidangkuasa Mahkamah yang sedia ada

ANTARA

WAN MOHAMAD HISHAM BIN WAN ABDUL HAMID

(No. K/P:680108-11-5021)

...PEMPETISYEN

DENGAN

CHE ALIAS BIN HAMID MOHAMED@HASHIM

(No. K/P: 660602-11-5299)

...RESPONDEN

JUDGMENT

Introduction

1. The petitioner, Wan Mohamad Hisham bin Wan Abdul Hamid was a registered voter as well as an election agent for the Barisan National (BN) candidate Dato 'Seri Hj. Ahmed bin Said (SP1) for the 15th General Elections (GE15) for the Parliamentary Constituency of Kemaman (P040).
2. The petitioner had filed this Election Petition (EP) on 3.1.2023 at the High Court in the state of Terengganu under section s. 32(c) of the Election Offences Act 1954 (EOA). He alleges that there

was corrupt practice committed by the respondent's agents.

Background facts

3. On 10.10.2022 the Malaysian Parliament was dissolved to make way for the 15 General Elections (GE15). On 20.10.2022 the dates for the nomination of candidates and polling dates were announced. Nomination day was on 5.11.2022. The polling date was set to be on 19.11.2022. Campaign period for GE15 was from November 5 until 11.59pm, November 18.
4. On 5th November 2020, the following named persons were accepted as candidates to contest for the Kemaman Parliamentary seat under their respective political parties.

Candidate		Political Party
1	ROSLI	Parti Pejuang Tanah Air ("PEJUANG")
2	CHE ALIAS BIN HAMID	Parti Islam Se Malaysia ("PAS")
3	DATO' SERI HJ AHMAD BIN SAID	Barisan Nasional of Malaysia ("BN")
4	HASUNI BIN SUDIN	Pakatan Harapan ("PH")

5. Polling was held on 19.11.2022 as planned. The results of the GE15 was gazette on 14.12.2022 via Warta Kerajaan Persekutuan PU (B) 608/2022. The respondent (SR1) had been chosen as the Member of Parliament for Kemaman with a majority of 27,179 votes. A tabulation of the results are as follows:

Name of Candidate		Name of political party/independent	Number of votes
1.	ROSLI	PEJUANG	506
2.	USTAZ CHE ALIAS HAMID	PAS	65,714
3.	DATO' SERI HJ AHMAD BIN SAID	BN	38,535
4.	HASUNI BIN SUDIN	PH	8,340
Total number of votes			<u>113,095</u>

6. The petitioner seeks to declare void the results of the election for the Kemaman Parliamentary seat. He therefore filed this EP based on the allegation of bribery and corruption committed by the respondent by himself and/or through his agents as stated in Section 32(c) of the Election Offences Act (Act 5) together with section 10(a) and/or (c) and/or (e) punishable under Section 11(1) (b) of Act 5.
7. The petitioner prayed for the following Orders:
 - i) that the respondent was not duly returned or elected as the Member of Parliament for Kemaman;
 - ii) that the election for the Parliamentary Constituency of Kemaman which took place on 19.11.2022 was invalid and void and
 - iii) any other reliefs as the Court deem fit and just.
8. Originally the grounds for the avoidance of the election result of the Kemaman Parliamentary seat

were contained in paragraphs 7, 9, 10,11,12,13, 17,18,19 and 20 of the EP.

9. The respondent however had objected to the EP by way of a preliminary objection contained in a letter dated 24.1.23. The previous Election Court allowed the preliminary objection by the respondent and struck out the EP on 12.2.2022. The petitioner appeal to the Federal Court was allowed and the matter was reverted to the High Court to be tried before another judge. The Federal Court however only allowed the appeal for the grounds in paragraphs 9, 10,11,12 17,18,19 and 20 of the EP. See **Abdul Hakim Abdul Wahid V. Mas Ermieyati Samsudin & Another Appeal [2023] 6 CLJ 667**

10. During the course of the trial on the 3.7.2022 parties informed me that it was only upon receiving the full written judgment of the Federal Court that they realized that the Federal Court also disallowed the petitioner's appeal in respect of paragraph 7 of the EP. By then SP2 had been

called to give evidence in respect of paragraph 7. Consequently, SP2's evidence was expunged.

11. The hearing of this Petition commenced on 13.6.2023. On 5.7.2022 at the close of the petitioner's case, learned counsel for the petitioner informed this court the petitioner had decided not to proceed with the ground in paragraph 12 as they failed to serve the subpoena on YB Abdul Razak bin Ibrahim. This court allowed the petitioner to withdraw paragraph 12 with no adverse inference being made against the petitioner.

Allegations in the EP

12. The petitioner seeks to avoid the election under section 32(c) of Act 5.

... Pempetisyen kamu menyatakan menurut Seksyen 32(c) Akta 5, sesuatu perbuatan penyogokan atau perbuatan rasuah telah dilakukan berkaitan dengan PRU-15 tersebut oleh Responden di dalam Bahaigan Pilihan raya tersebut

atau dengan pengetahuan atau persetujuan Responden atau oleh mana-mana ejen Responden seperti yang berikut adalah Butiran-butiran yang akan dinyatakan di dalam Petisyen ini.

13. The petitioner alleged that the respondent through his agents had given bribe monies to the voters in a large scale in several ceremonies, (collectively referred to as "Majlis Bantuan One-off") held in the Parliamentary Constituency of Kemaman to induce the voters to vote for the respondent. The grounds are stated in paragraphs 9,10,11,17,18,19, and 20 in the EP.
14. The Majlis Bantuan One-off where the bribe monies were said to be given to the voters are as follows:
 - (i) "Majlis Pengagihan Bantuan One-off Ibu Tunggal, Orang Kurang Upaya, Pencen Rakyat DUN Cukai di Dewan Sri Amar, Kemaman."

As pleaded in **para. 9** of the EP, in this ceremony, which was held on 15 November 2022, during the campaign period of the GE15, YB Hanafiah bin Mat, (SP4) the Adun for Cukai, acted as an agent of the respondent gave monies of RM150.00 to each of the registered voters of the Kemaman Parliamentary Constituency who attended the ceremony to induce them to vote for the respondent.

- (ii) "Majlis Penyerahan i-Belia di Dewan Sri Amar, Kemaman pada 15 November 2022"

In **para. 10**, it was pleaded that on 15 November 2022, SP4 as agent of the respondent gave RM150 to the registered voters to induce them to vote for the respondent.

- (iii) "Majlis Penyerahan i-Siswa di Dewan Sri Amar, Kemaman pada 17 November 2022"

In **para. 11** of the election petition, it states that on 17 November 2022, SP4 as an agent of the respondent gave RM150 to the registered voters so they vote for the respondent.

- (iv) "Majlis Penyerahan i-Siswa di DITC Teluk Kalong pada 17 November 2022"

In **para. 17** of the EP it was stated that on 17 November 2022, YB Hishamuddin Abdul Karim (SP6), member of Terengganu State Legislative Assembly for Tepuh, as an agent of the respondent, gave RM150 to the registered voters who attended the ceremony to induce them to vote for the respondent.

- (v) "Majlis Penyerahan i-Belia di Kompleks Paya Lasir pada 14 November 2022"

In **para. 18**, the appellant pleaded that on 14 November 2022, during the campaign period of the GE15, YB Wan Sukairi Wan Abdullah (SP7), member of Terengganu State Legislative Assembly for Wakaf Mempelam, as an agent of the respondent gave RM150 to the registered voters that attended the ceremony to induce them to vote for the respondent.

(vii) "Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 16 November 2022"

In **para. 19** of the petition, it was pleaded on 16 November 2022, during the campaign period of GE15, YB Saiful Azmi (SP5), a member of Terengganu State Legislative Assembly for Kemasik, an agent of the respondent, gave RM150 to the registered voters who attended the event to induce them to vote for the respondent.

(viii) "Majlis Penyerahan i-Siswa di Dewan Sivik
Kerteh pada 17 November 2022"

In **para. 20** of the petition, it was pleaded that on 17 November 2022, during the campaign period of GE15, SP5, an agent of the respondent, gave RM150 to the registered voters of the Parliamentary Constituency of Kemaman who attended the event to induce them to vote for the respondent.

15. The trial proper commenced on the 13.6.2023. The petitioner called a total of 7 witnesses and the respondent 4 witnesses.

<i>No.</i>	<i>Name of Witness</i>	<i>Classification</i>
<i>1.</i>	<i>YB Dato' Seri Dr. Haji Ahmad bin Said</i>	<i>SP 1</i>
<i>2.</i>	<i>En. Md Noordin bin Awang</i>	<i>SP 2</i>
<i>3.</i>	<i>Cik Wardatul Shafiya binti Yusoff</i>	<i>SP 3</i>
<i>4.</i>	<i>YB Haji Hanafiah bin Mat</i>	<i>SP 4</i>
<i>5.</i>	<i>YB Ir. Saiful bin Suhaili</i>	<i>SP 5</i>

6.	<i>YB Hishamuddin bin Abdul Karim</i>	<i>SP 6</i>
7.	<i>YB Wan Sukairi bin Wan Abdullah</i>	<i>SP 7</i>
8.	<i>En. Mohd Shahrir bin Ghani</i>	<i>SR 1</i>
9.	<i>En. Ahmad Bukhari Abdul Rahman</i>	<i>SR 2</i>
10.	<i>En. Mohd Al-Ghazali Bin Abu Bakar</i>	<i>SR 3</i>
11.	<i>YB Che Alias bin Hamid</i>	<i>SR 4</i>

Petitioner's Case

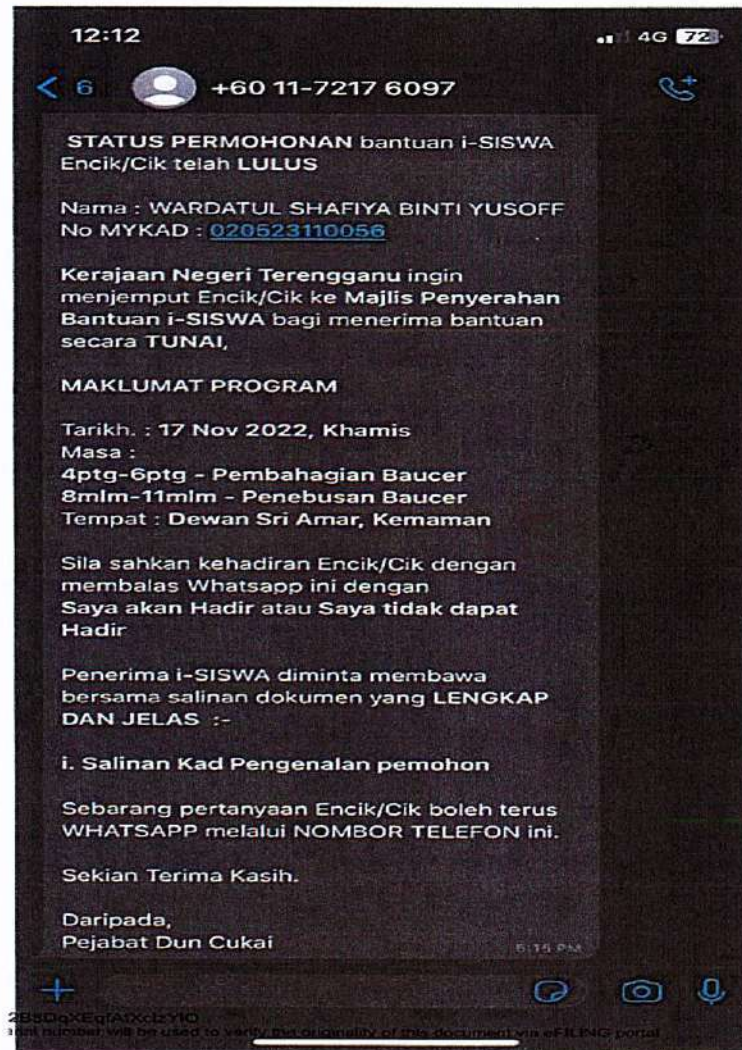
16. The following evidence was presented during the petitioner's case corresponding to the grounds in the EP.

SP3' evidence in respect of para. 11.

17. Wadatul Shafiya Binti Yusoff (SP3) gave evidence that she was at the Dewan Sri Amar Kemaman on the 17.11.2022 where she was one of the recipients of RM150.00 "Bantuan One-off i-Siswa DUN Cukai".

18. SP3 was a registered voter at the Kemaman Parliamentary Constituency.

19. SP3 received an invitation from the “Kerajaan Negeri Terengganu” via WhatsApp on her hand phone. The message was sent through the “Pejabat DUN Cukai” to attend the “Majlis Penyerahan i-Siswa” on the 17.11.2023 (2 days before the election date). A screen shot of the invitation was tendered as P3 and reproduced here. See PAGE 63 Notes of Evidence (NOP).



P3

20. She said that she had applied for the “Bantuan i-Siswa” sometime in August or September 2022 when the advertisement appeared in the social media. PAGE 75 NOP.
21. In order to obtain the “bantuan” she would have to apply for it through the website “i-Bantuan”. She would further have to send a filled form to the office of the DUN Cukai through the website. She also had to send a printed copy of the Borang to the DUN Cukai to be entitled for the RM150.
22. She did not send the printed copy to the office of the DUN Cukai but to her surprise she received the invitation P3 through WhatsApp to attend the Majlis Penyerahan i-Siswa at Dewan Amar.
23. On 17.11.2022 she arrived at the Dewan Sri Amar at about 5.30pm to collect the “i-Siswa” voucher as instructed in the WhatsApp invitation P3. After collecting the voucher, she returned to the Dewan

Sri Amar to receive the “Bantuan One-off i-Siswa”. She was given RM150.00 at the Dewan Seri Amar at 9.00 pm on 17.1. 2022. PAGE 66 NOP.

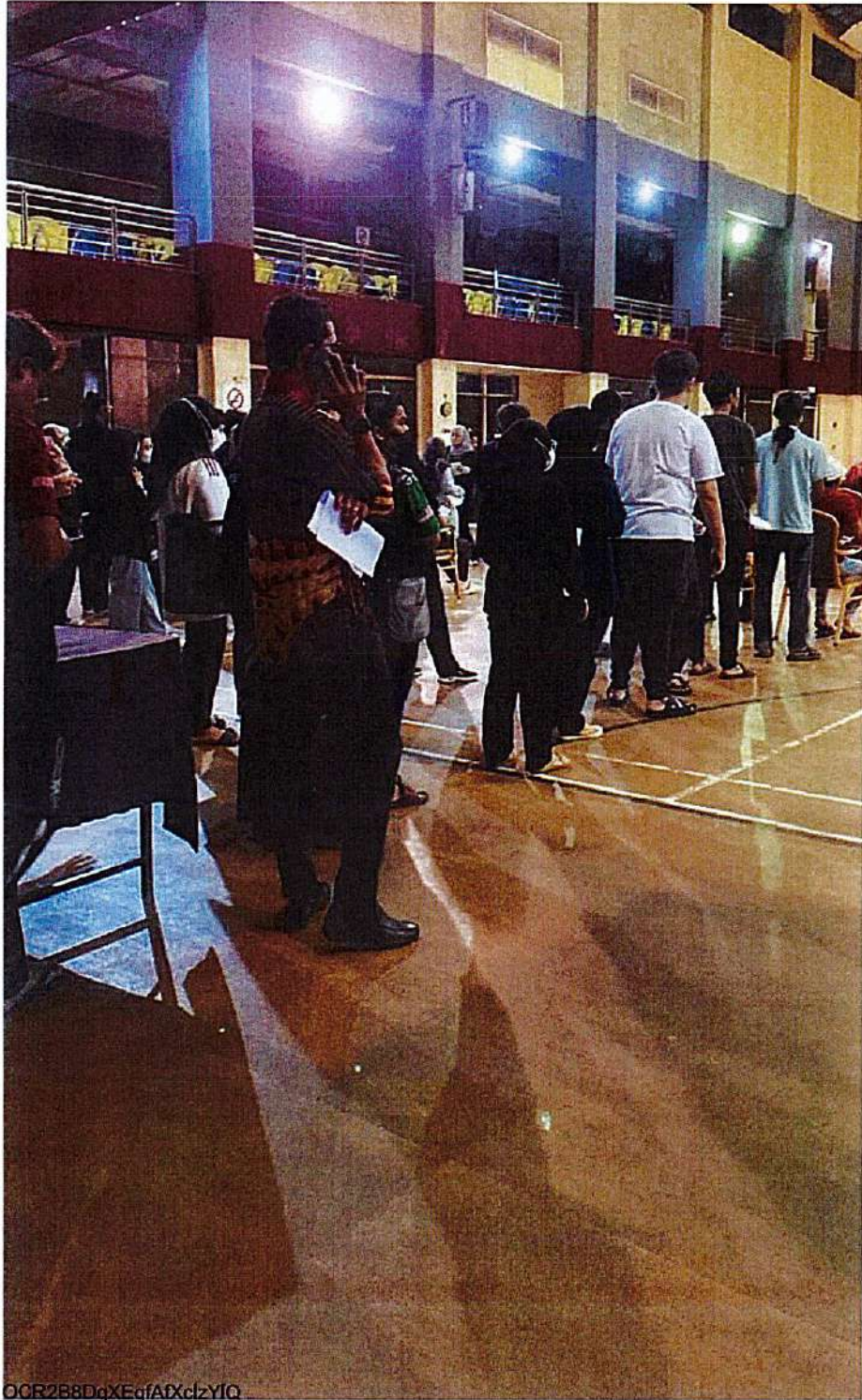
24. SP3 took photographs of the distribution of the “Bantuan One-off i-Siswa” ceremony while at the Dewan Sri Amar on 17.11.2022. These photographs were tendered as Exhibits P4A, P4B and P4C. She stated that photograph P4B depicts YB Haji Hanafiah (SP4) at the rostrum giving the speech.



P4A



P4B



P4C

25. She had also personally made an audio recording with her hand phone of part of the speech of SP4. This audio recording was later transferred to a compact disc and tendered as P5. The audio recording was played in court. SP3 confirmed that the contents of the audio recording was what she heard and recorded on 17.11.2022. PAGE 65 NOP.
26. SP3 stated that P5 contained the last 3 minutes or so of the speech of SP4. The total length of the speech was about 20 minutes. The part recorded by SP3 was at the end portion of SP4's speech. A transcript of the recorded speech of SP4 was tendered as Exhibit P6.

TRANSCRIBE AUDIO UCAPAN YB HANAFIAH MAT

YB HANAFIAH	: Boleh tak undi bulan?
Audience	: Boleh.
YB HANAFIAH	: Boleh ke tidak?
Audience	: Boleh.
YB HANAFIAH	: Unclear" dok bunyi do. Boleh ke tak boleh undi bulan?
Audience	: Boleh
YB HANAFIAH	<p>: Siapa tak undi bulan angkat tangan, saya nak beri duit tambahan. Siapa tak undi bulan angkat tangan saya nak beri duit tambahan "unclear".</p> <p>Saya harap adik-adik sekalian, sebagai orang yang bijak, golongan yang bijak yang akan mewarisi negeri ini. Yang boleh tengok belaka, yang boleh membaca. Dan kena ingat ya, tiktok harini yang paling hebat ialah Perikatan Nasional. Yang paling hebat. "unclear" merupakan raja tiktok Kemaman. Betul ke tak betul?</p>
Audience	: Betul.
YB HANAFIAH	: Dulu Pakatan Harapan pegang tiktok, harini sudah berubah, menandakan bahawa anak-anak muda yang berkaliber di peringkat IT, telahpun memasuki dan boleh setakat semua sekali yang menjadikan harini tiktok ini yang "unclear" ialah Perikatan Nasional.

	<p>Sebab itu saya merayu kepada adik-adik hari ini, saya merayu kepada anak-anak, kepada ibu bapa hari sabtu ini 19 haribulan turun mengundi pukul 8:00 pagi tanpa toleh ke kiri dan kebelakang dengan niat bahawa aku akan undi Parti Islam Semalaysia PAS, supaya dia memerintah negeri ini dengan baik.</p> <p>Kerana setakat ini, setakat ini satu parti yang tidak ada seorang pun yang lagi "unclear" rasuah parti PAS.</p> <p>Parti UMNO, presiden dia masuk jail. Presiden dia yang baru ni pula masuk jail. Parti MIC, presiden dia pun masuk jail. MIC pun smaa juga. Pakatan Harapan pun ada yang masuk jail. DAP pun ada yang masuk jail. Tapi parti PAS 32 tahun memerintah negeri Kelantan, tiada seorang pun lagi yang dipanggil oleh SPRM.</p> <p>Di Terengganu memerintah tahun 69, kalah, memerintah tahun 99, 4 tahun memerintah dan sekarang tiada seorang lagi yang dipanggil polis kes SPRM. Kerana pemimpin kami ialah ulama yang paling besar, manusia yang takut kepada Allah SWT. Bila dia tidak mencuri harta rakyat "unclear". UMNO nombor satu buat, nombor seribu pun buat juga ni "unclear" kami.</p> <p>Adik-adik boleh baca, boleh tengok internet dalam semua perkara boleh tengok bandingan parti PAS. Orang ada gelar parti kami parti Pak Lebai, tak pe lah parti kami Parti Pak Lebai pun tapi Menteri Besar kami ini mempunyai "unclear". Walaupun orang kata parti kami ini parti Pak Lebai.</p>
--	--

	<p>Jadi itulah harapan saya, dan InshaAllah kerajaan negeri dah bagi one-off RM150 dan sebelum daripada ni pun dah bagi dana raya. InshaAllah saya merayu, saya betul-betul mengharapkan adik-adik sekalian boleh undi parti kami pada hari sabtu ini dan hari ahad diisytiharkan cuti.</p> <p>Dengan lafaz Bismillahirrahmannirrahim, dengan nama Allah yang Maha Pemurah lagi Maha Pengasihani, saya merasmikan pemberian i-mahasiswa.</p>
Audience	: 'tepuk tangan'
YB HANAFIAH	: Sekian wabillahi taufik, wal hidayah. Assalamualaikum warahmatullahi wabarakatuh.

P5

27. SP3 revealed that after the speech SP4 personally handed out the "One-off bantuan i-Siswa" on the "pentas" to a few recipients. SP3 and other recipients received the money from the "pegawai yang bertugas". See WSP3 Q and A 5 and PAGE 76 NOP

28. In cross examination she agreed with counsel for the respondent that SP4 in his speech did not mention the name of the respondent at all. SP3 however clarified during reexamination that by SP4 urging the audience to vote for PAS it was, as a

matter of fact, to be understood that he was telling them to vote for the respondent as SP4 was the PAS parliamentary candidate for Kemaman. At PAGE 86-87 NOP SP3 said this:

P/P : Kemudian Warda ada ditanya rakan bijaksana saya En Yusfarizal dan Warda jawab seingat saya YB Hanafiah tiada pun berkempen secara jelas untuk YB Che Alias, calon PAS yang bertanding untuk Parlimen Kemaman.

SP3 : Ya, betul.

P/P : Kalaulah begitu, jelaskan kepada mahkamah mengapa YB Hanafiah dalam audio rakaman yang Warda diambil minta untuk undi bulan pada PRU-15 yang lagi 2 hari?

SP 3 : Untuk soalan daripada En Yusfarizal, soalan dia samada betul ke YB Hanafiah itu ada berkempen untuk undi YB Che Alias. Betul, dia tiada untuk YB Hanafiah memang tiada sebut untuk kami mahasiswa mahasiswi untuk mengundi YB Che Alias, tetapi calon untuk PAS ketika itu adalah YB Che Alias. Dari situ kita

boleh faham. Kalau kita undi PAS, maknanya kita undi Che Alias lah.

SP4' evidence in respect of paras.9, 10 and 11.

29. SP4 was the Timbalan YDP PAS Kemaman and Lajnah (Ketua) Perpaduan National kawasan Kemaman, Penolong Badan Setiausaha Badan Perhubungan PAS Negeri Terengganu. Effectively SP4 was at all material times the deputy to the respondent who was the YDP PAS Kemaman. SP4 had held the position of Timbalan YDP PAS Kemaman for, on the whole, three terms.
30. SP4 had been working together with the respondent in politics for nearly 20 years. However, he did say, in the context of their work, they functioned independently. This was how he described it at PAGE146 NOP.

SP4 : Saya banyak bantu kerja-kerja beliau. Oleh kerana beliau YDP dan saya timbalan, oleh itu saya banyak bantu

dia. Tapi dalam lajnah ini, masing-masing bergerak sendirilah.

31. In the State Government SP4 held the portfolios of Pengerusi Kebajikan Pembangunan Wanita dan Keluarga Dan Perpaduan Nasional. He is also the ADUN for Cukai.
32. He also confirmed that the respondent is the YDP Pas kawasan Kemaman does not hold any position in the Terengganu state government.
33. Paras. 9,10 and 11 of the EP was referred to SP4. In his evidence SP4 stated he was the person who officiated ("perasmi") all the 3 programs as mentioned in Paras.9, 10 and 11. He spoke for about 20-30 minutes. He stated that he attended the Majlis Bantuan One-off in his capacity as an Exco representing the Terengganu state. He however does not remember the exact dates of these ceremonies. PAGE 153 NOP.

34. In his speech, he urged the audience to ensure the state government continued to be led by PAS. This is what he said:

P/P : Saya diarahkan, untuk kata YB telah hadir pada 17/11/2022 bersamaan Khamis jam 8 malam bagi merasmikan program penyerahan bantuan iSiswa.

SP4 : Saya hadir tapi tidak ingat tarikh 17hb ni. Semua program saya hadir sebagai perasmi.

P/P : Semua program yang YB hadir ni, YB berucap?

SP4 : Ya.

P/P : Berucap dalam 20-30 minit?

SP4 : Adalah.

P/P : Selain daripada ucapan YB yang menyatakan inisiatif kerajaan negeri. Apa lagi intipati ucapan YB dalam ketiga-tiga program itu?

SP4 : Banyak berkisar di situ, mungkin politik sedikit dan gurauan pun ada.

P/P : Maksud politik itu, apa yang YB kata?

SP4 : Saya rasa dari segi politik itu, saya mohon pada orang ramai untuk pilih sebuah kerajaan yang baik dan menyambung Kerajaan Negeri

Terengganu pada pilihanraya yang akan datang.

P/P : Saya ulang balik, memohon orang ramai untuk memilih kerajaan dan menyambung Kerajaan Negeri Terengganu yang diterajui oleh PAS pada pilihanraya yang akan datang?

SP4 : Ya.

35. He was shown the photograph P4B taken by SP3 on 17.11.2022 and confirm his attendance there.
PAGE 150 NOP.

P/P : Saya ingin rujuk YB kepada dokumen dalam ikatan B. Mukasurat 13 iaitu ekshibit P4B. Terangkan kehadiran YB di majlis pemberian One-off ibu tunggal, orang kurang upaya, pencen rakyat, iBelia, iSiswa pada 17/11?

SP4 : Saya hadir sebagai exco untuk merasmikan pemberian One-off ini.

36. Referring to the transcript of the speech he had given (P6), SP4 explained that it was in jest when he said that he would give more money to those who voted UMNO. He however admitted that his

speeches were to gain votes for PAS. PAGE 154
NOP.

SP4 : Inisitif kerajaan negeri ini yang dilakukan selama lima tahun dia memerintah dia akan bawa kepada pemilihan diperingkat politik. Nak masuk pilihanraya. Yang itu yang banyak saya terangkan. Dan kemudiannya saya mungkin bergurau dengan *audience*.

P/P : Gurauan itu berbentuk macam mana?

SP4 : Ada yang saya gurau tu saya ugut, saya kata mungkin kalau kamu tidak undi dah saya, saya tidak beri. Itu gurauan. Dan ada juga saya kata, siapa yang undi UMNO saya nak beri lebih lagi. Itu gurauan saya. Saya memang suka bergurau dan orang ramai pun kenal saya sebagai seorang yang suka bergurau.

P/P : Terangkan dalam ucapan YB itu, untuk ketiga-tiga program yang YB hadir ini YB ambil pendekatan YB hadir 11,12,13,14. Arahan anak guam kami, YB hadir 15, 16 dan 17. Saya ulang balik, YB kata inisiatif dan politik dan gurauan. Selain itu ada YB bagi

ucapan untuk beri wang lebih dan sebagainya jika mengundi PAS?

SP4 : Tiada. Saya kata, siapa yang undi UMNO hari ini, angkat tangan saya bagi lebih duit. Saya ingat ucapan saya begitulah. Satu lagi yang saya kata, siapa yang tidak undi PAS saya tak akan beri duit.

P/P : Ada dalam ucapan, YB ada meminta untuk meraih undi. Mengundi PAS?

SP4 : Ada.

37. SP4 also stated that reading in its context, what he said in respect of the state previously handing out money for the “dana raya” and presently the RM150 i-Siswa so that the recipients would vote for his party was “sogokkan”. PAGE 155 NOP

P/P : Jelaskan pada mahkamah kontek YB dengan menyatakan dengan dah diberi wang RM150 dan sebelum ini dana raya, adik-adik undi parti kami. Apa konteks yang YB cuba nak sampaikan?

SP4 : Yang Arif, kalau saya baca dalam buku ini wang sogokan.

38. SP4 was unwavering that all that had been stated in P6 was only “gurau”. This is what he said at PAGE 156 NOP:

P/P : Saya diarahkan oleh anak guam saya, ucapan YB yang ada dalam transkrip dari mukasurat 16-18 dan mainan audio tadi, konteks YB itu berbentuk membeli undi daripada mereka yang hadir?

SP4 : Tidak, Yang Arif. Saya selalu berguarau. Dalam program lain pun saya memang kata begitu. Tapi, tak pernahpun saya lakukan. Itu hanyalah gurauan.

39. SP4’s attention was brought to a video recording made on 15.11.2022. SP4 confirms that the video shows him making a speech at the Dewan Seri Amar in one of the Majlis Bantuan One-off officiated by him. He also confirmed the contents of the transcript of the video P15A. PAGE 157 and 158 NOP.

40. This video recording in DVD was tendered as Exhibit P15 and the transcript of the speech marked as P15A. The transcript is reproduced below. P15 was also played in court.

TRANSCRIBE VIDEO UCAPAN YB HANAFIAH MAT

YB HANAFIAH	: Kerajaan membubarkan Dewan Undangan Negeri yang saya yakin Dewan Undangan Negeri akan bubar dalam bulan 6 ataupun lebih lagi InshaAllah. Kalau dengan lain perkataan, kerajaan akan bubar sampai orang dia, jadi kita akan perintah negeri Terengganu ini dengan sebaik mungkin.
	Hari ini juga kerajaan berikan pencen rakyat tanpa mengira bangsa, tak kira kaum melayu, cina, india dan seumpamanya. Dan kerajaan juga berikan tanpa mengira parti. Orang PAS dapat, orang UMNO pun ni mesti ramai dapat. Kalau zaman UMNO Barisan Nasional dulu, JKK akan tendang kalau dia tengok nama kita orang PAS. Tapi hari ini saya pesan kepada JPKK, orang yang layak beri. Tak kira dia UMNO tak kira dia MCA tak kira dia MIC kena beri pasal dia layak.
	Tetapi hari ini, oleh kerana kebetulan pilihanraya 19 haribulan ini saya nak minta supaya Tuan Puan mengundi Parti Islam Semalaysia, boleh ke tak boleh?
Audience	: Boleh.
YB HANAFIAH	: Tak berapa kuat. Boleh ke tak boleh?
Audience	: Boleh.
YB HANAFIAH	: Kena ingat tau, kalau tak beri undi pada PAS pada 19 haribulan ini, bayaran dana raya sikit lagi, saya tak beri. Ha ini hari ini. Biar orang nak kata saya apa pun, pasal saya tolong dah Tuan Puan, tiba-tiba Tuan-Tuan dan Puan-Puan tak tolong saya.
	Jadi dana raya sikit lagi, yang kita akan bayar sekitar bulan 3 dan bulan 4 ini, saya pastikan nama-nama mereka saya akan buang. Sebab itu saya minta hari ini, 19 haribulan hari mengundi, turun senyap-senyap, masuk dalam bilik undi pangkah bulan. Boleh ke tak boleh?
Audience	: Boleh.

YB HANAFIAH	:	Boleh ke tak boleh?
Audience	:	Boleh.
YB HANAFIAH	:	<p>Senyap je ni. Dok rok? Dak pe, saya dah pesan pada JPKK. Saya dah pesan, saya dah tolong dah kali ini. Saya tolong pencen rakyat. Saya tolong dapat JKM, cukai pintu pun tak kena. Tiba-tiba tak nak juga minta permintaan saya, bulan 3 kek gek gi bayar dana raya saya potong nama. Ha ni, hari ini. Ha kira bengkung juga la aku kira.</p> <p>Ha ni kalau JKK zaman UMNO dulu, dia potong awal-awal nama PAS dok beri bantuan, hari ini biar aku pulok. Ha jadi gitu.</p> <p>Ha. Hasrat saya nya, saya nak beri belaka. Hasrat saya ni. Tapi saya minta la tolong saya, supaya pilhanraya kali ini biar PAS menang, pilihanraya 19 haribulan ini.</p>

P15A

41. In the video SP4 covered, among other things, matters pertaining to him obtaining for the recipients “pencen rakyat” and “JKM” which is commonly understood as the abbreviation for “Kementrian Kebajikan Masyarakat”. It would therefore be reasonable to conclude from this that the speech was made concerning the “Bantuan One-off Ibu Tunggal, Orang Kurang Upaya, Pencen Rakyat.”

42. Although admitting to the contents of P15 as in the transcript P15A, SP4 regarded the contents of the speech as “gurauan kosong”. It was his habit or “perangai” to joke and everyone knew about it.
PAGE 172 NOP.

SP4’s Facebook postings (P13 and P14)

43. SP4 testified that the method of distribution of the i-Belia and the i-Siswa were made by SP4 starting with a symbolic or “gimik” distribution 20 – 40 persons by SP4. The rest of the money was distributed by the employees of Pejabat Daerah.
PAGE 160 NOP.

44. This “gimik” is captured in his Facebook postings in P13 and P14.

45. SP4 states at PAGE 149 and 150 NOP that he attended the event at para.10 and para.11 EP.

46. He confirms that P13 and P14 is shown the Facebook Page of which he is the owner of the

Facebook account. He also endorses the contents of P13 which read as a whole praised the PAS administration in Terengganu and directly referring to the ceremony in para.10 of the EP which took place on 15.11.2022. He described how the money for the i-Belia was distributed at PAGE 150 NOP:

P/P : YB, di dalam ekshibit P13 ini YB telah membuat ciapan dalam Facebook YB telah ada siaran. Ciapannya bahawa pada hari ini seramai 2000 orang belia dan beliawanis di Dun Chukai telah menerima bantuan berbentuk wang tunai secara One-off. Terangkan bagaimana pemberian telah dilakukan di Dewan Seri Amar pada 15/11 untuk bantuan belia, iBelia secara One-off itu YB?

SP4 : Nama-nama mereka ini dipilih oleh Jabatan Belia Negeri Terengganu. Mereka dijemput untuk hadir ke dewan tersebut . Saya hadir sebagai perasmis untuk merasmikan program ini dan sekaligus menyerahkan wang peruntukkan RM150 seorang.

47. The contents of the message on the Facebook page P14 were in respect the i-Siswa ceremony on 17.11.2022 in respect of para 11.

48. As for the confirmation of the contents of P13 and P14 SP4 states during examination in chief at
PAGE 150 NOP:

P/P : Rujuk satu tangkapan skrin dalam hantaran Facebook YB seperti lampiran 1. Bundle B. Mukasurat 7. Siapa pemilik Facebook Hj Hanafiah Mat?

SP4 : Saya.

P/P : Yang Arif, *the maker is here. Can I ask the permission of this court, the Facebook be mark as exhibit? The maker is here.*

Mah : Adakah awak yang memasukkan apa yang terpapar di skrin itu?

SP4 : Bukan saya. Media saya yang masukkan.

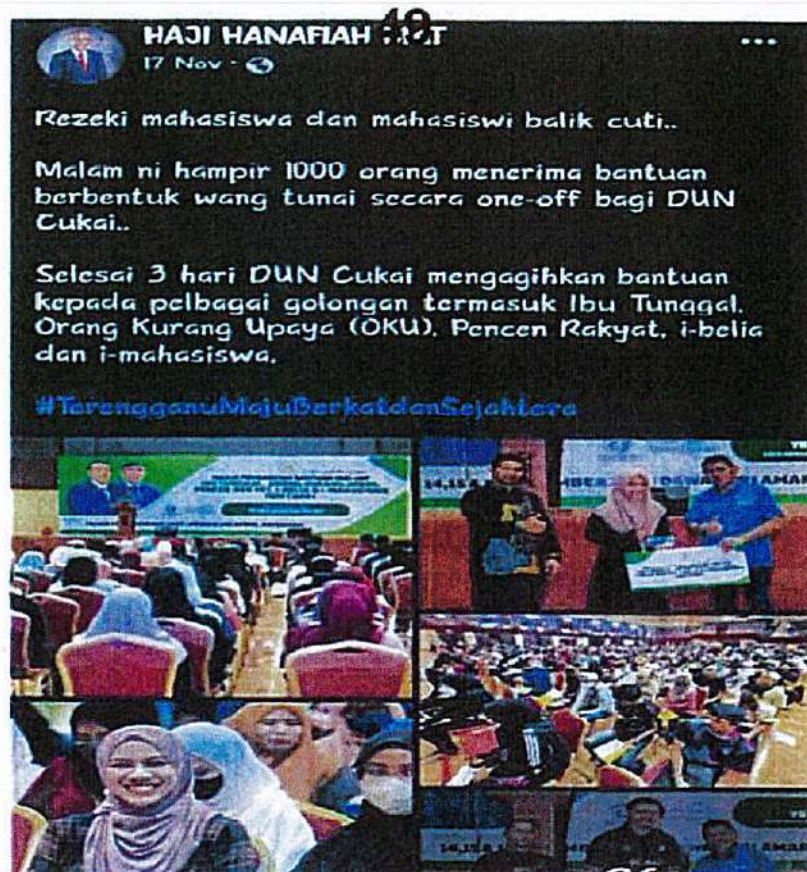
Mah : Dengan awak punya pengetahuan dan izin?

SP4 : Selepas saya baca, saya setuju.

49. P13 and P14 are reproduced below.



P13



P14

50. During cross examination SP4 explained that the fund received had to be distributed around the campaign period as the funds had been obtained in March 2023. Accounts had to be closed by 30.11.2022 and the report prepared by 15.11.2023. The funds had to be distributed during the months of September and November. He however said that the funds could be distributed before November. Page 161 – 162 NOP.

SP4 : Tarikh tutup akaun selepas bulan 11. Sekitar 30/11. Semua laporan kena hantar sebelum 15/11. Hantar ke pejabat daerah untuk sahkan dan diangkat ke kerajaan negeri. Ini semua makan masa.

Mah : Soalan peguam, bolehkah sebelum 15/11?

P/P : Boleh ke sebelum November?

SP4 : Boleh, tapi duit sampai masa itu. Duit dari kerajaan negeri masuk ke pejabat daerah. Dia sampai waktu itu. Jadi kita terpaksa keluarkanlah duit itu. Duit banyak, jadi kita kena keluarkan. Kena minta dengan bank lagi kerana duit ini dekat sejuta lebih.

51. SP4 said the distribution of the funds took time after it was released. They had to determine those eligible for the One-off payments. It had to go through the Pejabat Daerah Kemaman and other agencies before it was finally distributed. The process took three to four months. That was why the “bantuan One-off” was paid during the campaign period of GE15. It was a coincidence that

the distribution happens to coincide with GE15. Page 169 NOP. This applied to all One-off payments for “ibu tunggal, pencen rakyat, Belia and iSiswa.

52. SP4 explained that part of his speech urging the recipients to vote for PAS was made in the context of the yet to be determined date of the state election and not GE15. PAGE 173 NOP.

P/R : YB ada nyatakan selepas cerita inisitif Kerajaan Negeri Terengganu, YB kata intipati politik untuk mohon pilih kerajaan yang baik dan sambung kerajaan negeri yang ditadbir PAS pada pilihanraya akan datang?

SP4 : Ya.

P/R : Setuju konteks kata-kata YB adalah dalam konteks kerajaan negeri?

SP4 : Ya.

P/R : Konteks kerajaan negeri yang ingin disambung itu adalah konteks pilihanraya negeri, dan setelah pilihanraya negeri adalah setelah dewan undangan negeri dibubarkan

dan ketika ucapan dibuat, dewan undangan negeri belum dibubarkan?

SP4 : Ya.

53. SP4 denied that the One-off distribution of funds in the i-Belia and i-Siswa had anything to do with PAS. The Majlis Bantuan One-off were planned by the Terengganu State Government. The monies for the “bantuan One-off” for all the ceremonies came from the “dana khas” given by the Federal Government.
54. To support his contention that what he said was in jest he stressed that none of the purported treats such as not paying the “dana raya” were carried out or capable of being carried out. Further there was no way he could determine whether the recipient had voted for his party or not. PAGE 170 NOP.
55. Lastly whatever was said and done at the Majlis Bantuan One-off were done one by him alone and not at the instructions or knowledge of the

respondent. The respondent also did not attend the ceremonies officiated by him. PAGE 171 NOP.

SP5 in respect paras. 19 and 20.

56. At all material times SP5 was an Ahli Jawatan Kuasa PAS Kawasan Kemaman and also an ex-officio of the Badan Perhubungan PAS Terengganu.
57. He also held a post in the Majlis Tindakan Dewan Undangan Negeri (MTD) Kemaman and Penolong Setiausaha (2) for PAS Kemaman. This would mean that the respondent was more senior than SP5 in the PAS hierarchy.
58. In the state administration he holds the office of ADUN for Kemasik, merangkap Timbalan Exco Utiliti, Kemudahan Awam, Teknologi Hijau Negeri Terengganu. PAGE 181 NOP.
59. He confirms presence in the events in respect of paras.19 and 20 of the EP. He could not however remember the exact date. PAGE 183 NOP.

60. SP5 was there to officiate as well as to distribute the money the government is entrusted with in the “One-off” i-Belia and i-Siswa at the Dewan Sivik Kerteh. It was an ongoing program of the state government in fulfilling the trust and helping the people. PAGE 187 NOP.

SP5 : Tarikh yang ditetapkan adalah sama.

P/P : Pada tarikh 15 dan 17 November 2022 ianya tarikh-tarikh kempen pilihanraya boleh diadakan. Apa komen?

SP5 : Sebagaimana saya maklum, saya sampaikan apa yang diamanahkan oleh kerajaan bagi penyerahan duit tersebut dan dalam ucapan saya juga saya menjelaskan ini adalah program berterusan kerajaan negeri dalam menyempurnakan amanah dan membantu rakyat.

SP5's Facebook postings

61. Reference was made to the Facebook postings in P16A, P16B, P17A and P17B where SP5 confirms

was from his Facebook of which he was the account holder. PAGEs 183 and 184 NOP.

P/P : Siapa pemilik Facebook IR Shaiful Azmi Suhaili?

SP5 : Maksud pemilik macammana?

P/P : Siapakah pemilik Facebook?

SP5 : Ada beberapa admin.

P/P : Akaun atas nama siapa?

SP5 : IR Shaiful Azmi Suhaili.

P/P : Siapa IR Shaiful Azmi Suhaili?

SP5 : Saya.

P/P : Maker Facebook hadir. Saya pohon ditandakan mukasurat. Mukasurat 27, boleh sahkan ini juga berada dalam ciaoan Facebook IR Shaiful Azmi Suhaili?

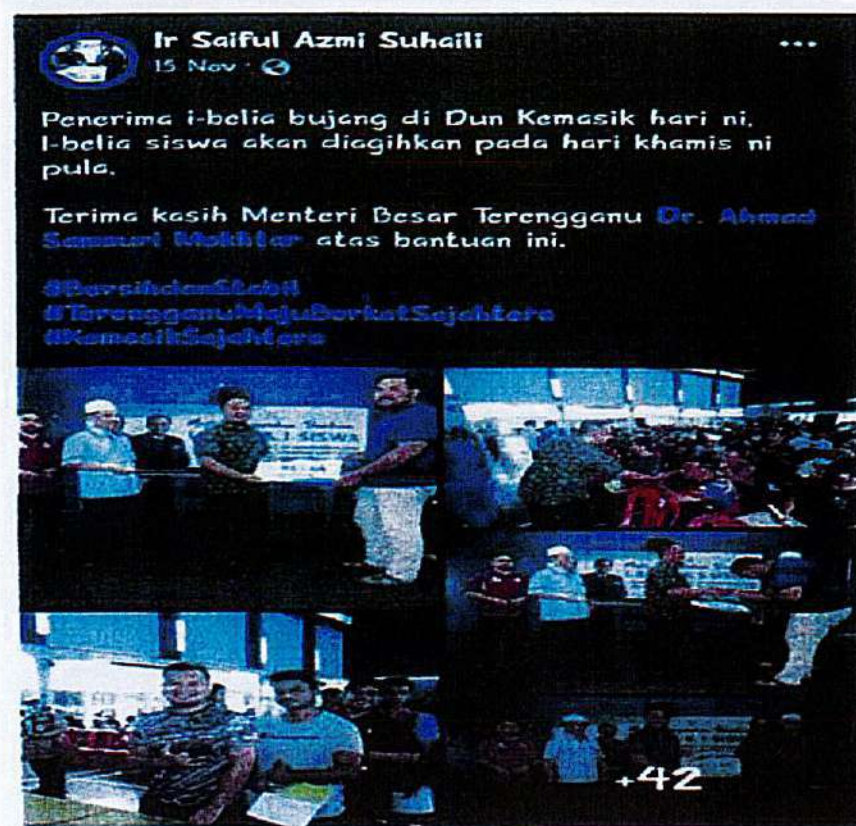
SP5 : Tak ingat tapi mukasurat 27 tertera seperti Facebook Che Alias Hamid.

P/P : Yang Arif, saya ingin tender mukasurat 26 sahaja. Kedua-dua gambar.

Mah : Ini saksi sahkan gambar dalam Facebook dia?

SP5 : Mukasurat 26 betul, 27 bukan. 28 betul. 29 bukan saya punya Facebook.

62. The posting in P16A proclaimed the distribution of money in the i-Belia program on the 15.11.2022. It also states that the distribution of money for the i-Belia Siswa will be held on Thursday i.e. 17.11.2022. SP5 explained that the hashtag “bersih dan sejahtera betul # Perikatan Nasional” i.e the hashtag is of the Perikatan National. The Facebook postings are shown below.



P16A



P17A

63. P16A, P16B, P17A and P17B shows the One-off i-Belia ceremony where SP5 was participating.
64. SP5 states that he was invited to the Majlis Bantuan One-off to officiate the i-Bantuan and i-Siswa. PAGE 183 and 187 NOP

P/P : Terangkan apa jenis bentuk program rasmi bantuan iBelia bujang dan iBelia Siswa di Dun Kemasik ini?

SP5 : Program tersebut adalah program Kerajaan Negeri Terengganu. Saya dijemput selaku adun bagi Dun

Kemasik untuk pengagihan yang telah disusun oleh Pejabat Daerah Kemaman dan TSIS. Jadi pada dua program tersebut saya hadir atas jemputan bagi merasmikan dan penyerahan bagi bantuan iBelia dan iSiswa tersebut Yang Arif.

65. He said that the respondent had attended the Majlis Bantuan One-off briefly on 15.11.2022 and 17.11.2022 before any speeches were made. Page 184 NOP.
66. The respondent came without notice or invitation. PAGE 187 NOP.
67. According to SP5 he did not know that the respondent together with his escorts would be coming.
68. Reference was made to photographs P18A and P18B which had been taken from the Facebook account of the respondent. The photos in P18A and

P18B depict the Majlis Penyerahan i-Belia on 17.11.2022. SP5 agreed that he is in P18A second from the right together with the respondent to the left next to him. The person at the extreme left "berbaju PAS" with the "lambang PAS" on it was later identified as the campaign manager of the respondent. The person in the extreme right was an escort wearing "vest biru Perikatan National". Page 210 NOP. It is common knowledge that PAS in the coalition of Perikatan National.

69. SP5 identified photograph P18B as the respondent "bersalam" with the recipients. The photograph P18B shows SP5 was following behind the respondent as the respondent was entering Dewan Sivik Kerteh. PAGE 187 NOP

SP5 : Memandangkan beliau adalah mantan ahli Parlimen Kemaman dan saya sebagai adun sebelum pembubaran termasuk seniority beliau, justeru tidak sopan saya berjalan dahulu di hadapan beliau, justeru saya ikut

beliau apabila beliau hadir di dewan,
saya hadir lewat. Apabila saya hadir,
program akan dimulakan.



P18A



P18B

70. SP5 asserted that the respondent did not know of the distribution of the funds to the i-Belia and i-Siswa recipients.

71. During the ceremonies SP5 said that he had followed the respondent to the stage and had introduced the respondent to those in the hall as the “mantan YB Parlimen”. PAGE 200 NOP.

SP5 : Saya tak memperkenalkan YB Che Alias sebagai calon.

Mah : Adakah diperkenalkan sebagai apa-apa?

SP5 : Saya sebut mantan YB Parlimen.

72. References were made to photographs P21 and P22A show SP5 and the respondent on stage at the Dewan Sivik Kerteh on the 15.11.2022. P21 and P22A are reproduced below.



P21



P22A

73. When asked by learned counsel for the petitioner why the respondent was present in the Majlis Bantuan One-off and even went on the stage both on 15.11.2022 and 17.11.2022 when it was said to be an official state program and the respondent did not hold any position in the state he replied that it was "luar pengetahuan saya". PAGE 185 NOP.

74. SP5 stated that the actions of the respondent in turning the event into a campaign was beyond his control. PAGE 210 NOP.

P/P : Saya diarahkan anak guam saya, YB Che Alias hadir dalam program bantuan iBelia dan iSiswa pada 15 dan 17/11/2022, tujuan kehadiran dia adalah untuk meraih undi dari penerima-penerima iBelia dan iSiswa?

SP5 : Itu modus operandi calon, diluar kawalan saya.

75. He agreed with counsel for the respondent that the respondent only went to the Dewan Sivik Kerteh

only for a short time and was not involved with the programs nor was he invited. PAGE 196 NOP.

76. SP5 agreed with counsel for the respondent that the i-Belia program and the i-Siswa program which took place on 15.11.2022 and 17.11.2022 respectively occurred before the dissolution of the Dewan Undangan Negeri Terengganu and that the budget for the programs had been approved by the Dewan Undangan Negeri Terengganu. PAGE 191 NOP.

SP6 in respect of para. 17

77. SP7 held important positions in PAS. He was the Ketua Penerangan Negeri Trengganu and Pengarah Jabatan Pilihan Raya PAS kawasan Kuala Nerus. PAGE 215 NOP
78. He confirms his attendance at the “majlis i-Siswa at the DITC Teluk Kalong Iman on 17.11.2022. PAGE 215 NOP.

79. He states that he was there in his capacity as the Timbalan Pengerusi Exco Pembangunan Belia, Sukan dan NGO Negeri. He also confirms that there was the distribution of money for the “bantuan i-Siswa”. PAGE 217 NOP.

80. SP6 stated that the period for the distribution of the bantuan I-Siswa would be in November only. Reference was made to the letter dated 15.9.2022 which was headed “Mesuarat Penyelarasan Pelaksanaan Program Bantuan I-Belia Dan I-Mahasiswa Tahun 2022” (P11). The letter was signed by Ahmad Bukhari Bin Abdul Ragman who was the Penolong Setiausaha Kerajaan. A copy of the letter was sent to SP6. SP6 however cannot remember whether he attended the meeting on 15.9.2022.

81. His attention was also brought to a Memo dated 8.11.2022 (P33) where the date for the distribution was stated as 28.8.2022 to 31.10. 2022. He said that the change of date was announced in a media

statement before GE15 was made known. He was not aware of any document to state that the dates for the distribution of the aid had been changed to November 2022. PAGE 221 NOP.

82. He stated that his presence at the ceremony was on the platform of the state government and not the party PAS.

83. Finally, he agreed with counsel for the respondent that the allocation for the bantuan i-Belia and i-Siswa had been debated and passed by the state legislative assembly. It was budgeted for 2022.

SP7 in Respect of para18

84. SP7 was the Pengurus Jawatan Kuasa Pembangunan Belia, Sukan dan NGO Terangganu. He is also a member of the state EXCO. Because of the portfolio held by him he was given the responsibility to operate and manage the "bantuan dana i-Belia".

85. He is also the YDP PAS Kuala Terengganu and the “setiausaha perhubungan PAS Terengganu” and the ADUN Wakaf Mempelam.
86. SP7 confirmed that he had attended the ceremony at "Majlis Penyerahan i-Belia di Kompleks Paya Lasir pada 14 November 2022". SP7 also confirms that P25 from his Facebook account. It describes the event that took place on 14.11.2022 where he and Ustaz Jusoh had “menyampaikan sumbangan” to the recipients. PAGE 236 and 248 NOP.
87. He confirmed that the budget for 2022 for “i-Belia dan i-Mahasiswa” covered the whole of Terengganu. He was entrusted to lead the committee in respect of the One-off payments for the “i-Belia and i- Siswa until it was implemented. This is what he said at page 238 NOP.

P/P : Dan dalam program One-off ini terangkan penglibatan YB dalam menjalankan program ini?

SP7 : Saya diamanahkan untuk mengetuai jawankuasa untuk mengelola ataupun menguruskan pembahagian dana ini daripada perbentangan kertas kepada MMKN (Majlis Meyuarat Kerajaan Negeri) sehinggalah ke pelaksanaan.

88. He explained that the role of the Terengganu Strategic and Integrity Studies Institute (TSIS) was to implement the whole program of i-Belia and i-Siswa.
89. To be eligible for the i-Belia and i-Siswa program the recipient must be a registered voter in Terengganu. Page 240 NOP.
90. TSIS had in their letter in P28 fixed the date for the distribution of the i-Belia funds to be between 26 August to 10th September and i-Siswa funds to be between 26 August to 30 September 2022.
91. By virtue of a letter from the Setiausaha Kerajaan dated 14 September 2022 (P30) the date for the

disbursement of funds for the i-Belia and i- Siswa were changed to between 28 August 2022 to 31 October 2022. This letter was signed by the Penolong Setiausaha Kerajaan one Ahmad Bukhari bin Abdul Rahman.

92. However, a day after the letter P30 i.e. on 15.9.2022, the date was again changed for the distribution of the funds to between 30th October 2022 to 30 November 2022. This was done at a meeting chaired by SP 7 himself. The dates were changed “berdasarkan perkembangan semasa.” The announcement for the change to between 30.10.2022 to 30.11.2022 was made in a press conference on 15.9.2022.

93. According to SP7 he issued a press statement on 15.9.2022 in respect of the change. There was however no official document to indicate the change of the dates. Page 245 NOP.

94. It was put to SP7 that although he had changed the dates for the distribution of the funds for the i-Belia and i-Siswa to between 30.10.2022 to 30-11-2022 he could have still carried out the distribution after the dissolution of parliament or when the Election Commission on 20.10.2022 announced the date for the nomination of candidates. Alternatively, the distribution could have occurred after 19.11.2022.

95. SP7 stated that this could not be done as 1) the new dates had been announced to the people on 15 September at the press conference. "Semua sasaran telah mendapat maklumat tersebut." 2) the date for the distribution had been changed a few times 3) the new date had been fixed before Parliament had been dissolved 4) the urgency of aid going to the people. PAGE 252-253 NOP.

P/P : Terangkan adakah terdapat tarikh lain pemberian ini boleh dibuat daripada 30/10-4/11 dan 20/11-30/11?

SP7 : Ya.

P/P : Terangkan dalam situasi ada tarikh sebelum 5/11 dan adanya tarikh lepas 19/11 mengapa pelaksanaan iBelia dan iSiswa dibuat dalam tempoh berkempen sedangkan ada tarikh lain?

SP7 : Seperti yang sedia maklum tarikh yang dibenarkan 30/10-30/11 dan sebenarnya ini adalah tarikh yang telahpun dipinda beberapa kali. Dalam erti kata yang lain, sepatutnya lebih awal bagi, tapi memandangkan ada beberapa isu yang berkaitan dengan kewangan termasuk isu penyampaian sumbangan-sumbangan bantuan yang lain, seperti ada beberapa i lagi seperti dalam bundle ini, contohnya ilbu tunggal, yang kita terpaksa urus satu persatu semuanya melibatkan kewangan, maka kita terpaksa pinda ke 30/10-30/11. Dan kita pilih tarikh-tarikh ini kerana ada kelapangan masa untuk kita memberikan dan kewangan ketika itu dan seberapa boleh kita nak selesaikan seberapa segera. Kalau boleh satu hari, satu hari kita mahu selesaikan. Memandangkan dah beberapa kali delay.

96. When he was asked why the date for the return of the unutilized funds remained the same i.e. 1.11.2022 to 30 November 2022 when the dates for the distribution had been changed to 30th October to 30 November 2022, SP7 replied that it was a a “kesilapan manusia”.

97. SP7 could not explain why he did not include in slide at Page 149 in respect of the timeline for the “laporan pelaksana kembali baki wang.” He stated he “terlepas pandang”.

Evidence adduced by respondent

98. The following relevant evidence was presented during the respondent's case.

99. Ahmad Bukhari bin Abdul Rahman (SR1) was the Penolong Setiausaha Kerajaan Negeri Terengganu.

100. He states that the One-off payments i.e. Ibu tunggal, OKU and Pencen Rakyat and the One-off payments for the i-Belia and i-Siswa were programs initiated by the Terengganu State Government as it was budgeted for in the Terengganu State Budget presented on 15.11.2021 and which was approved and passed by the Dewan Undangan Negeri. For each of the One-off payment program the recipients received RM150.00.

101. TSIS presented a Kertas Cadangan Pelaksanaan Program Bantuan i-Belia dan i-Mahasiswa 2022 which was approved by the Majlis Mesyuarat Kerajaan Negeri (MMKN).

102. TSIS was to implement and manage the One-off payments.

103. The original date for the payments had to be changed because of the delay by MMKN in approving the One-off payments. The date for the

payments had to shifted from between 1.10.2022 to 30.10.2022 to between 30.10.2022 to 30.11.2022.

104. Mohd. Shahril bin Ghani (SR2) gave evidence in respect of the One-off payments for ibu tunggal, OKU and penceen rakyat. This program was hosted by the Pejabat Daerah and not the respondent. The schedule for payments was made in a bona fide manner. The time line could not be changed and the funds for the One-off payments had to be used before the financial year 2022.

105. Mohd. Al Ghazali bin Abu Bakar (SR3) was the officer from TSIS responsible the implementation of One-off payments in i-Belia and i-Siswa. He in effect repeats what was stated by SR1 and SR2.

106. Che Alias bin Hamid (SR4) is the respondent. He states that all the One-off programs were official programs of the Terengganu State Government. He never engaged SP4, SP5, SP6 and SP7 as his agents or to campaign for him. He further contends

that he had no knowledge of the Terranganu State Government's program in respect of the One-off payments neither had he any control over the state government's program.

107. SR4 states that his presence at the Dewan Sivik Kerteh on 15.11.2022 and 17.11.2022 was unplanned as he was with his campaign team visiting from one "daerah" to another.

108. The photographs in P58A and P58B were shown to SR4. He agreed that the photographs were from his Facebook. Page 360 NOP.

109. SR4 also agreed with counsel for the plaintiff that he was in those pictures.

110. SR4 also admitted that P18A and P18B was also from his Facebook. In P18A agreed that he was standing beside SP5. P21 and P22A showed him on the "pentas".

Petitioner's submission

111. The thrust of the petitioner's submission was that

- a) there was bribery (penyogokan) in the bantuan One-off Ibu Tunggal, Orang Kurang Upaya, Pecen Rakyat at Dewan Sri Amar on 15.11.2022.
- b) there was bribery in the distribution of cash in Majlis Bantuan One-off at:
 - i) "Majlis Penyerahan i-Belia di Dewan Sri Amar, Kemaman pada 15 November 2022" (para. 10 EP)
 - ii) "Majlis Penyerahan i-Siswa di Dewan Sri Amar, Kemaman pada 17 November 2022" (para. 11 EP)
 - iii) "Majlis Penyerahan i-Siswa di DITC Teluk Kalong pada 17 November 2022" (para. 17 EP)
 - iv) "Majlis Penyerahan i-Belia di Kompleks Paya Lasir pada 14 November 2022" (para. 18 EP)

- v) "Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 16 November 2022" (para.19 EP)
 - vi) "Majlis Penyerahan i-Siswa di Dewan Sivik Kerteh pada 17 November 2022" (para. 20 EP)
- c) the bribery was committed by SP4 (in respect of paras 9,10 and 11 EP), SP5 (in respect of paras 19 and 20 EP), SP6 (in respect of para.17 EP) and SP7 (in respect of para 18 EP) acting at all material times as agents of the Respondent.
- d) the purpose of the bribery was to induce the voters attending the One-off Ibu Tunggal, Orang Kurang Upaya, Pencen Rakyat and the majlis i-Belia and i-Siswa to vote for the respondent.

Respondent's Submission

112. The thrust of the respondent's submission was that:

- (a) the petitioner himself had not given evidence to support the EP.
- (b) none of the recipients of the One-off Bantuan Ibu tunggal, Orang Kurang Upaya or Pencen Rakyat or i-Bantuan or i-Siswa were called to give evidence.
- (c) the funds for all the One-off payments had been budgeted for and had been passed by the Dewan Undangan Negeri Terengganu on 15.11.2021 and also the Majlis Mesyuarat Kerajaan Negeri (MMKN) on 7.9.22. That being so the budget has the force of law.
- (d) SP4, SP5, SP6 and SP7 were not the agents of the Respondent. They were at the Majlis Bantuan One-off in their capacity as representatives of the State Government of Terengganu.
- (e) the Majlis Bantuan One-off were initiated and organized by the State Government.

- (f) the petitioner had failed to prove the element of inducement.

The Relevant Law

113. The petitioner filed this EP under section 32(c) Act

5. In **Manogaran Marimuthu V. Sivaraj Chandran [2018] 1 LNS 2062** the ingredients of section 32(c) and its connection with other provisions in Act 5 had been explained as follows:

[14] Under section 32(c), the Petitioner is to prove any of the following elements:

- (i) that a corrupt practice or illegal practice was committed in connection with the election by the candidate; or*
- (ii) that a corrupt practice or illegal practice was committed with the candidate knowledge or consent; or*
- (iii) that a corrupt practice or illegal practice was committed in connection with the election by any agent of the candidate.*

[15] *Corrupt practice is provided in section 11 of Act 5, and the EP is grounded on section 11(b), which reads as follows:*

"Punishment and incapacities for corrupt practice

11. (1) Every person who -

....

(c) commits the offence of treating, undue influence or bribery;

.....

shall be guilty of a corrupt practice...."

[16] *In respect of the offence of bribery, which constituted corrupt practice within section 11 read with section 32(c), the EP is grounded on section 10(a), (c) and (e) of Act 5, which reads:*

"Bribery

10. The following persons shall be deemed guilty of the offence of bribery:

(a) every person who, before, during or after an election, who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

(b)....

(c) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure

the election of any person, or the vote of any elector or voter at any election;

(d).....

(e) every person who, either before, or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;"

[17] Therefore, under section 32(c) of Act 5 read with section 10, the Petitioner is to prove the following elements:

(i) that before, during or after an election, either

(a) the Respondent by himself directly or indirectly, or

- (b) *by another person with the Respondent's knowledge or consent*

(ii) either

- (a) *gives money to an elector or voter [sections 10(a)],*
- (b) *gives money to any person [section 10(c)], or*
- (c) *advances, or pays or causes to be paid any money to any person [section 10(e)]*

(iii) for the following purpose:

- (a) *in order to induce the recipient of that money to vote or refrain from voting in the election [section 10(a)],*
- (b) *in order to induce the recipient of that money to procure or endeavour to procure the election of the Respondent [section 10(b)] (sic), or*
- (c) *with the intent that such money or any part thereof shall be expended in*

*bribery at any election
[section 10(e)].*

[18] For the purpose of this EP, the issues to be decided by this Court (in respect of corrupt practice) are whether before the Election:

- (i) whether any person, directly or indirectly, by himself or by any person on his behalf gives any money to any elector or voter; and*
- (ii) that the monies were given to the voter to induce the voter to vote or refrain from voting, procure the election of the Respondent or such money or any part thereof shall be expended in bribery.*

[19] In respect of section 32(c) of Act 5, whether the corrupt practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate.

114. As for the burden of proof corrupt practice, **Ali Amberan v. Tunku Abdullah [1969] 1 LNS 6** states as follows:

Now an allegation of corrupt practice is of a quasi-criminal nature in as much as a finding of corrupt practice entails penal consequences. The onus is on the petitioner to prove it beyond reasonable doubt by evidence which is clear and unambiguous.

115. The standard of proof to prove corrupt practice is beyond reasonable doubt. This does not mean however that while insisting on the standard of strict proof it becomes impossible to prove the allegation of corrupt practice. Such an interpretation would surely defeat the object of Act 5 which is to maintain the purity of the electoral process. See **Kho Whai Phiaw V. Chong Chieng Jen [2008] 1 LNS 785.**

116. An Election Court has special characteristics.

Election petitions are presented and pursued in very similar manner to claims made in the civil courts and, procedurally, the basic rules to be applied are those of the Election Petition Rules 1954 and in default the Rules of Court 2012. Therefore, election proceedings have an adversarial character.

117. Nonetheless, election petitions differ in several ways from civil actions. One of the special characteristics is that it is vested with at once an adversarial character as well as an inquisitorial character.

118. The Election Offences Act 1954 vests the Election Court with powers under section 33(3) Act 5 whereby the court may not stay content with only the dispute between the parties but may go further. It may at its own initiative by order compel any person concerned with the election to attend as a witness to be examined. The trial is not only the

trial of the persons directly before court but it is one of the election itself. That is apparent by the wording of section 33(3) Act 5.

Findings of this court

119. The situation in November 2022 was that the country was in the grips of election fever. Campaigning period began on 5.11.2022 and ended at midnight 18.11.2022. All eight parliamentary seats in Terengganu, one of them being Kemaman, were being contested. The Kemaman parliamentary seat consisted of the state constituencies of Kemasik, Kijal, Cukai and Air Putih. The situation was unique in that only the parliamentary seats were being contested. The State Legislative Assembly (DUN) was not dislodged as the elections for the state constituencies were not due yet. This meant the state government was still functioning at the material time. The seven Majlis Bantuan One-off in respect of this EP were being held less than one week before the polling

date i.e., 19.11.22. My findings herein are made against this backdrop.

Was there any money given?

120. It was not in dispute that all the Majlis Bantuan One-off in paras. 9, 10, 11, 17, 18, 19, and 20 did in fact take place and that SP4, SP5, SP6 and SP7 attended to officiate and participate in these ceremonies.

121. It was also not disputed that the "One-off" payment of RM150 was given to those who were eligible and attended.

122. To be eligible for the Bantuan One-off Ibu- Tunggal, Orang Kurang Upaya and Pencen Rakyat one of the conditions was that the recipient had to be a registered voter in Trengganu (see exhibits R46, R45 and R40 respectively). Likewise to be eligible for the i-Belia and i-Siswa payment it was also one of the conditions that the recipient had to be a registered voter in Trengganu. (See exhibit R20).

123. I find as a fact that money was given to the voters by SP4, SP5, SP6 and SP7 in all the Majlis Bantuan One-off in the form of cash payments. As those eligible must be registered voters in Terengganu, these monies were therefore given to the recipients because they were registered voters for otherwise, they could not have received any payment.

124. It is obvious that all the payments in the Majlis Bantuan One-off was inextricably tied to the recipient voter although the payments were labled as One-off payments for Ibu Tunggal, OKU, Pencen Rakyat and i-Belia and i-Siswa. The requirement of having to be a registred voter in Terengganu to be eligible for the payments provided the avenue for the corrupt practice to take root.

Were the payments were made to induce the voters?

125. I now come to the question whether the payments in the Majlis Bantuan One-off were given to the

voter to induce the voter to vote for the Respondent or procure his election or for the payment to be expended for bribery i.e., sections 10(a) (c) and (e) Act 5.

126. In respect of paras. 9, 10 and 11 of the EP, SP4 stated that he gave a speech on each of the three occasions when he was officiating the Ibu Tunggal, OKU and Pencen Rakyat or the i-Belia and i-Siswa ceremonies. On 15.11.2022 during the Majlis bantuan One-off Ibu Tunggal, OKU and Pencen Rakyat he made the speech as in exhibit P15A. He also made a speech at the i-Siswa one of payment on 17.11.2022 as in exhibit P6.

127. He emphasised that certain comments were said in jest and that the speech was not to induce the voter to vote for PAS.

128. I am however of the view that there were aspects of his speeches that could not possibly be said to

be spoken in jest ("bergurau"). For instance, he said at P15A :

(a) *"Tapi hari ini, oleh kerana kebetulan pilihanraya 19 haribulan ini saya nak minta supaya Tuan Puan mengundi Parti Islam Semalaysia, boleh ke tak boleh?"*

.....

(b) *"Jadi dana raya sikit lagi, yang kita akan bayar sekitar bulan 3 dan bulan 4 ini, saya pastikan nama-nama mereka saya akan buang. Sebab itu saya minta hari ini, 19 haribulan hari mengundi, turun senyap-senyap, masuk dalam bilik undi pangkah bulan. Boleh ke tak boleh?"*

(c) *"Ha. Hasrat saya nya, saya nak beri belaka. Hasrat saya ni. Tapi saya minta la tolong saya, supaya pilihanraya kali ini biar PAS menang, pilihanraya 19 haribulan ini".*

129. Two days later 17.11.2022 when he was giving a speech as in P6 at the the One-off i-Siswa he said:

(a) "Sebab itu saya merayu kepada adik-adik hari ini, saya merayu kepada anak-anak, kepada ibu apa hari Sabtu ini 19 haribulan turun mengundi pukul 8.00 pagi tanpa toleh ke kiri dan kebelakang dengan niat bahawa aku akan undi Parti Islam Semalaysia PAS, supaya dia memerintah negeri ini dengan baik".

(b) "Jadi itulah harapan saya, dan insyaAllah kerajaan negeri ah bagi One-off RM150 dan sebelum daripada ni pun dah bagi dana raya. InsyaAllah saya merayu, saya betul-betul mengharapkan adik-adik sekalian boleh undi parti kami pada hari Sabtu ini dan hari ahad diisytiharkan cuti".

130. I am unable to agree with learned counsel for the respondent that just because certain parts of the speeches were made in jest the whole of the speech was to be interpreted in the same manner. I find that the speeches read in its entirety were in fact an impassioned plea by SP4 to the recipients to vote for PAS, which can clearly be taken to mean

to vote for the respondent. I do not think there is any other way to look at them.

131. In both speeches SP4 had also referred to the giving of past and future payments, as well as present One-off payment to the voters while at the same time urging them to vote for PAS in the coming election. In my view relating the One-off i-Siswa and other payments to the coming election was a form of inducement as well as bargaining with the voters to vote for PAS.

132. I am also unable to agree with learned counsel for the respondent that SP4's speeches related to the yet to be announced state elections. SP4 had clearly referred to the coming GE15 on 19.11.2022. He even specified the date i.e., "19" which is a Saturday ("Sabtu"). I find it inexplicable that SP4 was only referring to the state election where no date yet had been fixed and not to GE15 which was only a few days away.

133. As for the Majlis i-Belia and i-Siswa in respect of paras. 19 and 20 of the EP I also find that there was inducement for the recipients to vote for the respondent. The nature of the inducement was not from speeches but by the Respondent himself attending the ceremonies.

134. It was an admitted fact the the Respondent had attended the Majlis Bantuan One-off where SP5 was officiating on both 15.11.2022 and 17.11.2022.

135. Both SP5 and the Respondent asserted that the Respondent's visit was unannounced and coincidental when he happen to arrive at the Majlis Bantuan One-off on the two dates. He was being brought from one place to another by his "pasukan kampen" without notice to where he was being brought. Further the respondent stressed that the ceremonies were state functions and he had nothing to do with him.

136. With respect I am unable to accept the Respondent's reasoning that his arrival at the Dewan Sivik Kerteh on both occasions was a mere coincidence. I say so because he arrived at the opportune moment just before the Majlis Bantuan One-off commenced on both occasions. He was warmly greeted socialized with those involved in the payment before the payments were made. Having been the incumbent and now seeking to be returned, he would have been easily recognized as the PAS palimentary candidate. He appeared on stage where the sitng arrangements had been prearranged. PAGE 209 NOP. He was sitted on the stage as well as sang the Negara Ku there together with SP5. See photographs exhibits P21 and P22A.

137. The respondent said that the Majlis Bantuan One-off were state organised functions and he did not participate in them. I am however not persuaded by this explanation.

138. Reference was made to photographs P58A and P58B. This is what the Respondent had to say:

P/P :Setuju dengan saya dalam P58 A & B ada kelihatan YB beramah mesra dengan petugas yang terlibat dengan agihan bantuan iBelia?

SR4 : Setuju.

P/P : Di P58B, setuju dengan saya YB adalah YB yang menyantuni dengan penerima iBelia ini?

SR4 : Setuju, baru masuk.

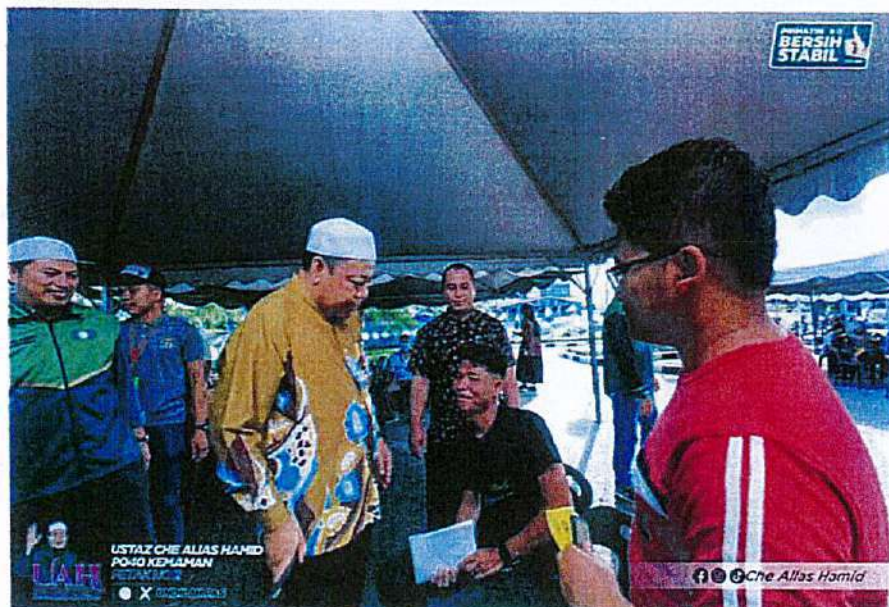
139. P58A was taken on 15.11.2022 at the Dewan Sivik Kerteh. At the background it could clearly be seen a streamer with the PAS logo along it. Further the respondent arrived there with his "pasukan kampen". PAGE 370 NOP.

140. Reference was also made to photograph exhibit P18A taken on 17.11.2022 which shows the respondent with his campaign manager to his left wearing a vest with a PAS logo. The persons in the photographs including the respondent and SP5

were showing two fingers signifying the position of the respondent as the second candidate in the ballot paper for the GE15. PAGE 365 NOP.



P58A



P58B

141. I am of the view that although the Majlis Bantuan One-off was said to be a state government function it was exploited by the Respondent and SP5 to include the One-off payments as part of the respondent's campaign to induce the voters to vote for him. He had no reason to be there in the first place. He did not hold any position in the state administration.

142. The respondent was there on two separate occasions before the payments were made. All the 32 Dewan Undangan Negeri in the state were having the i-Belia and i-Siswa programs at the material time. PAGE 185 NOP. As YDP PAS Kemaman and a candidate for the Kemaman Parliamentary seat it would be reasonable to conclude that the respondent knew such a programme was taking in his constituency. In these circumstances it would be difficult to believe that he did not know before hand that he was going to Majlis Bantuan One-off at the the Dewan Sivik Kerteh.

143. There was no evidence of any other candidate attending these ceremonies. The respondent was the personification of his party. His presence there with his "pasukan kempen" could only mean that he was at that time campaigning for the GE2. It was an oportune time to be there. His presence would be associated with the i-Belia and i-Siswa One-off payment and would be an inducement for the voters to vote for PAS. Admittedly he gave no speech but his presence spoke louder than words.

144. In addition I find that due to the respondent's position in PAS and the close working relationship between SP4 and SP5 the Respondent would have had express knowlege or at the very least implied knowlege that corrupt practices were committed in relation to the election. I note that although the planing for the GE15 in respect of Kemaman was controlled by "PAS pusat" the "sumber tenaga kerja" were "local" from the members of PAS

Kemaman which includes SP4 and SP5. See PAGE 360 NOP.

145. In considering paragraph 17 and 18 of the EP, I find that, unlike the situation in paras. 9, 10, 11 and paras.19 and 20 of the EP, there was no evidence that the One-off payments in paras 17 and 18 were intended to induce the voters to vote for the respondent. There were no speeches made as in the grounds in paras. 9, 10 and 11 EP. Neither was there evidence the respondent attended any of the Majlis Bantuan One-off in paras 19 and 20. That being the case I find that the grounds in paras.17 and 18 were not proven by the petitioner.

146. Be that as it may and notwithstanding my finding that there was no evidence of inducement, I did find that SP6 and SP7 were agents of the Respondent and that money payments were made in respect of the Majlis Bantuan One-off in paras.17 and 18.

Were SP4, SP5, SP6, SP7 “agents” of the Respondent?

147. The petitioner contends that SP4 (YB Hanafiah bin Mat), SP5 (YB Saiful Azmi) SP6 (YB Hishamuddin Abdul Karim) and SP7 (YB Wan Sukairi Wan Abdullah) were agents of the respondents and had common interest with the respondent. Learned counsel for the petitioner stressed that the meaning of “agent” in section 32(c) bears a totally different meaning from “election agent” appointed under section 12 Act 5. I agree with this distinction.

148. It is also observed that in section 32(c) the requirement of “knowledge or consent” is not required where the corrupt practice was committed by “any agent”.

149. Counsel further impressed on this Court that they all were prominent members in PAS and in the Terangganu state administration and had a common interest in ensuring their party won the Kemaman Parliamentary seat. In addition to this it

was not in dispute they all officiated the Majlis Bantuan One-off and gave out the payments.

150. As to whether SP4, SP5, SP6 and SP7 were agents of the respondent I am guided by the decision of Raja Azlan Shah (as His Royal Highness then was) in **Ali Amberan v. Tunku Abdullah [1969] 1 LNS 6; [1970] 2 MLJ 15**, where His Lordship held as follows:

*"Inspired and guided by English and Indian election law, I take the view that the rule of extended scope of agency would tend to make it impossible to preserve the purity and freedom of elections. Accordingly, a candidate at an election is responsible for the acts of agents who are not and would not necessarily be agents under common law of agency. **Therefore, a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote***

his election, may aptly be regarded the 'agents' of the candidate for election purposes. " (emphasis added)

151. I also considered the English case of **Akhtar and others v Jahan and others Iqbal and others v Islam and others**, [2005] All ER (D) 15 (Apr).

Briefly this case concerned the trial of two election petitions relating to local elections for the Birmingham City Council, the Election Court found that there had been corrupt and illegal practices on the part of the three Labour Party respondents, and that there had been general corruption in that corrupt and illegal practices for the purpose of promoting or procuring the election of the respondents.

152. The Election Court in **Akhtar and others** had to consider whether certain persons were agents of the respondents. The Election Court dealt with the matter in the following manner:

Who is an agent?

A candidate in an election is, in many situations, liable for the acts of his agents. The concept of agency is much wider in election law than in other areas of the law such as contract.

340. This wider concept of agency is well summarised in the Wakefield Case XVII7 in a passage which Mr de Mello sets out in his final submissions:

By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent's authority ... but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at election, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term "agency" in election matters, and a candidate is responsible generally, you may say, for the deeds of

those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided the candidate or his authorised agents have reasonable knowledge that those persons are so action with that object.

341. "Agent" is thus not by any means restricted to the candidate's official "party agent" but covers a wide range of canvassers, committees and supporters. The candidate is taken to be responsible for their actions even though he may not have appointed them as agents. Knowledge of what they are doing does not need to be proved against a candidate for him to be fixed with their actions.

153. It would not be out of place to reiterate that the respondent was the YDP PAS kawasan Kemaman and SP4 was his "Timbalan". SP4 was also the ADUN for Chukai. SP5 was an AJK PAS kawasan Kemaman and ex-officio in the Badan Perhubungan PAS Negeri Terengganu. SP5 was also the ADUN

Kemasik. SP6 was the Ketua Penerangan Negeri Terengganu and also Pengarah Jabatan Pilihanraya PAS Kawasan Kuala Nerus as ADUN for Tepuh. Finally SP7 was the YDP PAS kawasan Kuala Terengganu and also the Setiausaha Badan Perhubungan PAS Negeri Terengganu. He was the ADUN for Wakaf Mempelam.

154. It is my finding that SP4,SP5,SP6 and SP7 were all “prominent members” of PAS. They were certainly not mere party supporters. I therefore find that SP4,SP5,SP6 and SP7 were agents of the respondent at the material time when being present and officiating as well as participating in the respective Majlis Bantuan One-off. They had set up or furthered the respondent’s cause in the GE15 election by doing so.

155. In coming to this finding, I have not lost sight of what was said by the Federal Court in **Wan Sagar Wan Embong V. Harun Taib (NO 2) [2009] 1 CLJ 457:**

*On the second question as regards the issue of agency we are of the view the learned Election Judge is correct to conclude that the fact that a group of ten persons had held up the voter, that from amongst them one known to the voter had worn a PAS logo, and yet another in the group was recognized by the voter as the person who punched him, without more, is insufficient to show the culpability of the first respondent in the incident for this may well indicate that they were mere supporters whose acts the first respondent may not have any control of (see p. 18 of the Supplementary Record of Appeal). With respect, we find the pleading in the petition filed by the appellant on agency rests on mere conjecture. Although the principles applicable in Election Law are wider, we are of the view the principles should not be so extended as to cast the net of agency too wide to include even ordinary party supporters. The principles as laid down in the case of *Ali Amberan v. Tunku Abdullah* [1969] 1 LNS 6 do not extend that far. Quoting Taunton's case,*

Raja Azlan Shah J (His Royal Highness as he then was) approved the passage in the judgment reading it as follows:

The rule of Law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency... it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though himself not only did not intend it but even bona fide did his best to hinder it. (Emphasis added)

[22] On the strength of the above authority it is our judgment that there has to be an element of "appointment" wherein there is a nexus or connection between the named or identified persons alleged to be the "agents" and the first respondent as the candidate. The appellant has to plead this to allow the first respondent to meet the case. This element of "appointment" is present in

the statement of the law as defined by Raja Azlan Shah J (His Royal Highness as he then was) in the case of Ali Amberan

156. It is plain from the above passage that the Federal Court in **Wan Sagar Wan Embong** endorsed the wide meaning of “agent” in Ali Amberan. The word “appointment” in quotes relates to the special and wide meaning of “agent” as held by Raja Azlan Shah (as His Royal Highness then was) in Ali Amberan and of which is applicable to the present case.

157. The Federal Court however cautioned that “mere supporters” or “ordinary party supporters” should not be regarded as agents as this would be casting “the net of agency too wide.”

158. I believe the English Courts also recognise a similar distinction. For example, in **Erlam v Rahman [2015] EWHC 1215 (QB), [2015] All ER (D) 197 (Apr)** the Court was of the view that:

'... a distinction should be made between the candidate's team of supporters, canvassers and those whole unconnected members who may support and engage in unsolicited acts of corrupt or illegal practice.'

The Facebook postings

159. I have also considered the various Facebook postings tendered by the petitioner as exhibits P13, P16A, P18A, P18B, P22A, and P58A and P58B. I am of the view that the various Facebook postings, made after the ceremonies are relevant to show motive, through the subsequent conduct of SP4, SP5 and the respondent himself, in using the Majlis Bantuan One-off as a platform to induce the voters to vote for the respondent's party. See section 8 Evidence Act 1950.

160. These postings refer directly to the respective Majlis Bantuan One-off and contain either words encouraging the voter to vote PAS, hashtag of

Perikatan National or ballot paper with the PAS logo.

The failure of the petitioner to give evidence

161. I further find that it was not necessary for the petitioner himself to give evidence in this EP. What is important was that the relevant facts were before this court to constitute the elements of section 32(c) Act 5. It is also my finding that there was no oblique motive on the part of the petitioner not to give evidence. The petitioner was not at either of the Majlis Bantuan One-off. Any evidence given by him would therefore be hearsay. See

The failure of the recipients to give evidence

162. Learned counsel for the respondent contended that the non-calling of the recipients of the funds was fatal. It was his submission that they were important to prove that the recipients were induced to vote by the giving of the One-off payments. I find this submission is without merit.

163. It is obvious that calling of the voters who had received the One-off payments would entail revealing, directly or indirectly, who and which party they voted for. This would be against section 39 Act 5 where there is an absolute prohibition of disclosure of vote.

164. Furthermore, it is also trite the term "inducement" was concerned with the intention of the party inducing and not the mind of the voter said to be induced. In the oft quoted case of **Abu Seman v. Public Prosecutor [1981] 1 LNS 181; [1982] 2 MLJ 338** Chong Siew Fai J (as he then was) made the following observations in respect of this issue:

As to ground 5, it must be noted that section 10(a) of the Election Offences Act upon which the prosecution relies makes it an offence of bribery if anyone, inter alia, gives money to any voter in order to induce the voter to vote. What is material therefore is the intention of the giver of the money, not the elector who was given the money. In the Westminster

Case where the petitioner's case was that money was paid for allowing boards with the intention of corruptly influencing votes, B. Martin said (page 95): -

'The question is not what is the motive that operated upon the mind of the voter. The mind of the voter has nothing to do with it; the question is, the intention of the person who furnished the board. Probably there is no man who ever was bribed but who would swear that the bribe had not influenced his vote.'

....

Strictly speaking, it is unnecessary to prove inducement to vote for a political party. It is sufficient if it is proved that money was given in order to induce the elector to vote.

In determining whether there had been bribery the court will always look to the essence of the transaction whether the act was done with a view to influencing a voter in relation to his vote. The intention of a person against whom a charge of bribery is made must be proved and this may be established from his acts and other circumstances of the

case. As Bucknill J. observed in Kingston-upon-Hull 6 O'M. & H. 89,

'But people must be judged according to the inferences which people of common sense have to draw from their acts and words...

You cannot allow a man to say 'I did not intend to do that which amounted to bribery' if when you look at all the things which he did, and all the things which he said, there is only one conclusion to draw, which is the natural inference, and that is that he has done that which he said he did not intend to do. " (emphasis added)

The timing of the Majlis Bantuan One-off

165. SP7 was given the responsibility to lead the committee to manage the One-off payment for "i-belias and i-siswa. TSIS was the implementing agency tasked to carry out the one-off payments for i-Belias and i-Siswa. PAGE 333 NOP.

166. SP7 gave several reasons why the One-off payments had to be given at the last week before the elections. (See para 95 above).

167. I am of the view that none of these reasons given by SP7 as to why the One-off payments could not have been made before the campaign period i.e. 5.11.2022 or after the 19.11.2022 are credible.

168. If there was an urgency for the people to obtain the “bantuan” it could have been given anytime between 10.10.2022 to 5.11.2022. It must be remembered that the dates had been changed once before without any consideration of any urgency. The last change was from between 28 August 2022 to 31 October 2022 to between 30.10.2022 to 30.11.2022. Although the date of the distribution had been changed before there was nothing to prevent a further change especially where there was no written document verifying the last change. There was only the announcement in the press on 15.9.2022. Alternatively, the One-off payment date

could have been after 19.11.2022. The fact that the One-off ibu tunggal, OKU and Pencen Rakyat also had to be implemented beforehand was not an excuse as the i-Belia and i-Siswas programs could have been implemented together as was done in paras. 9,10 and 11 EP.

169. Further SR2 from TSIS agreed with counsel for the petitioner that the One-off payments could have been made before 5.11.2022 or after 19.11.2022.

P/P : Setuju dengan saya ada lagi tarikh sebelum 5/11 dan selepas 19/11 untuk agihan bantuan iBelia dan iSiswa dibuat?

SR2 : Ya.

170. He also agreed with petitioner's counsel that even if the accounts had been closed the One-off payments could still be made later. PAGE 314 NOP

P/P : Setuju dengan saya jika duit tak boleh kembali lepas akaun ditutup dan

aggap hasil maka bantuan iBelia dan iSiswa boleh buat tarikh lain?

SR2 : Setuju.

171. I find that TSIS could have decided that the various Majlis Bantuan One-off did not take place during the election campaign period but it did not. No cogent reason was given why it chose to cram all the Majlis Bantuan One-off in the final week before the election. Suffice to say here that the chairman of TSIA and all senior management positions in TSIS were held by members of PAS. PAGE 332
NOP.

P/P : Setuju dengan saya daripada pengerusi ke lembaga pengarah kepada pengurusan kanan penjawat jawatan ini ada jawatan dalam parti PAS di Terengganu dan pusat?

SR3 : Setuju.

172. The ceremonies were held at the crucial period between the 14th November and 18th November 2022. Similar ceremonies were being held around

the same time in all the 32 Dewan Undangan Negeri in the state. It is therefore my finding that the reason all the Majlis Bantuan One-off payments were cramped into the last week before the elections was to use these ceremonies to induce the recipients to vote PAS.

173. I do realise that the One-off payments were in the form of aid or “bantuan”. It was in essence a form of charity. In any event, this form of charity, for whatever reason, should not be allowed if it were to take place during an election campaign. The reasoning behind this proposition is derived from the English case of **Kingston-Upon-Hull 6 O' M & H 372** cited by counsel for the petitioner:

“There should be no charity at times of political warfare. Why? The reason is obvious – because whilst you, the donor, may be gratifying your own charity and doing a kindness, doing kindly acts to others, you may be doing a great injustice to your opponent; you maybe

doing what he is not; you put yourself on another plane and on another pedestal form that on which he is, and it is unjust to him to give whilst he is not giving, even although you may have a motive of kindness and generosity,

But people must be judged according to the inferences which people of common sense have to draw from their acts and words. As was said by Mr Justice Mellor in the Launceston Case, and as has been said by other judges, you cannot allow a man to say "I did not intend to do that which he did, and all the things which he said, there is only conclusion to draw, which is the natural inference, and that is that he has done that which he said he did not intend to do."

174. That such "charity" could be used to commit corrupt practice, as this case, cannot be ignored.

Were the Majlis Bantuan One-off a state organised?

175. Although it was submitted by the respondent that the Majlis Bantuan One-off were said to be state

functions as the State Legislative Assembly had not been disclosed yet, I find that the speeches P6 and P15A and the presence of the respondent in the respective ceremonies together with other documentary evidence had transformed the ceremonies to a PAS event involving bribery under section 10(a), (c) and (e) of Act 5. I had touched on this issue earlier in respect of whether the recipients were induced.

The Majlis Bantuan One-off was budgeted for

176. Further I am of the view that it is irrelevant that the funds for Majlis Bantuan One-off had been budgeted for in the Enakmen Perbekalan Terengganu 2022. What is important is not the source of the funds but of the intent of the giver and that the circumstances the funds were ultimately being used for.

177. In the upshot I find that the petitioner had proven beyond reasonable doubt that the Majlis Bantuan One-off as described in paras. 9,10,11,19, and 20

involved bribery as envisaged in sections 10(a), (c) and (e) Act 5.

Conclusion

178. I therefore find that the petitioner had proven to the satisfaction of this court that corrupt practice had been committed in connection with the election by the agents of the respondent, namely SP4 and SP5 under section 32(c) of Act 5. Consequently, pursuant to section 36(1) of Act 5, I declare that the election for the Parliamentary Constituency of Kemaman (P040) held on 19.11.2022 void.

179. In accordance with section 37 of Act 5, I will certify this decision to the Election Commission and report that corrupt practice has been proved to have been committed by the agents of the respondent at the election, namely the giving of money to the voter to induce the voter to vote. However, I will not report any person who have been proved at the trial to have been guilty of any corrupt practice because the monies paid in respect of the Majlis Bantuan

One-off was not from the respondent himself. The monies were from the coffers of the Terengganu state government. Further the monies were given to the people of Terengganu.

180. With regards to cost, I award the petitioner RM30,000.00 for this trial subject to allocatur.

Date: 10th October 2023



(ANSELM CHARLES FERNANDIS)

Hakim

Mahkamah Pilihan Raya di Kuala Terengganu

Date of Decision: 26th September 2023

Parties:

For the Petitioner : Tetuan Hafarizam Wan &
Aisha Mubarak (Kuala
Lumpur).

For the Respondent : Tetuan Wan Abd. Muttalib &
Co.